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BEFORE THE ARIZONA CORPORATION COMMISSION
DOCKETED

JIM IRVIN
COMMISSIONER-CHAIRMAN
TONY WEST
COMMISSIONER
CARL J. KUNASEK
COMMISSIONER

APR 01 1999

DOCKETED BY

IN THE MATTER OF THE APPLICATION OF
MOMENTUM TELECOM, INC. FOR A
CERTIFICATE OF CONVENIENCE AND
NECESSITY TO PROVIDE COMPETITIVE
INTERLATA/INTRALATA RESOLD
TELECOMMUNICATIONS SERVICES EXCEPT
LOCAL EXCHANGE SERVICES.

DOCKET NO. T-03367A-97-0230

DECISION NO. 61602**ORDER**

Open Meeting
March 30 and 31, 1999
Phoenix, Arizona

BY THE COMMISSION:

Having considered the entire record herein and being fully advised in the premises, the Arizona Corporation Commission ("Commission") finds, concludes, and orders that:

FINDINGS OF FACT

1. On May 5, 1998, Momentum Telecom, Inc. ("Momentum" or "Applicant") filed with the Commission an application for a Certificate of Convenience and Necessity ("Certificate") to provide resold interLATA/intraLATA telecommunications service in the State of Arizona.

2. In Decision No. 58926 (December 22, 1994), the Commission found that resold telecommunications providers ("resellers") were public service corporations subject to the jurisdiction of the Commission.

3. In Decision No. 59124 (June 23, 1995), the Commission adopted A.A.C. R14-2-1101 through R14-2-1115 to regulate resellers.

4. Momentum is a California corporation, which has been qualified to conduct business in Arizona since 1997.

5. Momentum is a switchless reseller, which purchases telecommunications services from MCI WorldCom and Frontier.

6. On March 10, 1998, the Commission's Utilities Division Staff ("Staff") filed a Staff

1 Report.

2 7. The Staff Report stated that Momentum provided internally prepared financial
3 statements for the month ended January 1998, which indicated that Applicant had a net loss of
4 \$24,000 for the month, negative retained earnings of \$2.2 million, and negative equity of \$1.6
5 million. Staff has concerns about Applicant's ability to incur operating losses and its ability to repay
6 customer prepayments, advances and deposits. Accordingly, Staff recommended that pursuant to
7 A.A.C. R14-2-1105.D, Applicant maintain for a minimum of one year, an escrow account equal to
8 the total amount of any prepayments, advances and deposits that Applicant may collect from its
9 customers as a condition of certification. In the alternative, Applicant could file a letter stating that it
10 does not currently charge customers any prepayments, advances or deposits, and does not intend to
11 do so in the future. If at some future date Applicant desired to charge customers any prepayments,
12 advances or deposits, it must file information with Staff that demonstrates Applicant's financial
13 viability. Staff would review the information and provide Applicant its decision concerning financial
14 viability within thirty days of receipt of the information. Staff believes that if Applicant experien
15 financial difficulty, there should be minimal impact to its customers. Customers are able to dial
16 another reseller or facilities-based provider, and may permanently switch to another company without
17 forfeiting any prepayment, advance or deposit.

18 8. The Staff Report stated that Applicant has no market power and the reasonableness of
19 its rates would be evaluated in a market with numerous competitors.

20 9. Staff recommended that:

- 21 (a) Applicant's application for a Certificate should be approved subject to A.A.C.
22 R14-2-1106.B;
- 23 (b) Applicant's intrastate toll service offerings should be classified as competitive
24 pursuant to A.A.C. R14-2-1108;
- 25 (c) Applicant's competitive services should be priced at the effective rates set
26 forth in Applicant's tariffs and the maximum rates for these services should be
27 the maximum rates proposed by Applicant in its tariffs. The minimum rates
28 for Applicant's competitive services should be Applicant's long run
incremental costs of providing those services as set forth in A.A.C. R14-2-
1109. Any future changes to the maximum rates in Applicant's tariffs must
comply with A.A.C. R14-2-1110;

(d) Applicant should be required to comply with the Commission's Rules and modify its tariffs to conform with these Rules, if it is determines that there is a conflict between Applicant's tariffs and the Commission's Rules; and

(e) The application may be approved without a hearing.

10. By Procedural Order dated March 16, 1998, the Commission set a deadline of April 17, 1998 for filing exceptions to the Staff Report; requesting that a hearing be set; requesting intervention as interested parties; filing affidavits of publication of its application; and filing proof of establishment of an escrow account or statement regarding prepayments, advances or deposits.

11. By letter dated July 21, 1998, the Commission directed Applicant to comply with the March 16, 1998 Procedural Order, and requesting compliance by August 21, 1998.

12. Applicant had not provided the requested notice, and on September 3, 1998, the Hearing Division issued a Proposed Order recommending denial of the application.

13. On September 14, 1998, Applicant filed exceptions to the Proposed Order, requesting additional time to comply with Commission directives.

14. The matter was pulled from the September 15, 1998 Open Meeting, and by Procedural Order dated September 28, 1998, Applicant was directed to comply by October 27, 1998.

15. By letter dated January 19, 1999, the Commission directed Applicant to comply with the September 28, 1998 Procedural Order by February 19, 1999.

16. Applicant did not file the requested information.

17. Applicant has not complied with the Rules and Orders of the Commission.

CONCLUSIONS OF LAW

1. Applicant is a public service corporation within the meaning of Article XV of the Arizona Constitution and A.R.S. §§ 40-281 and 40-282.

2. The Commission has jurisdiction over Applicant and the subject matter of the application.

3. Notice of the application and proceeding has not been given in accordance with the law.

The provision of competitive interLATA/intraLATA reseller services in Arizona by Applicant is not in the public interest.

ORDER

IT IS THEREFORE ORDERED that the application of Momentum Telecom, Inc. for a Certificate of Convenience and Necessity for authority to provide competitive interLATA/intraLATA resold telecommunications services except local exchange services shall be, and the same is, hereby denied, and the Docket closed.

IT IS FURTHER ORDERED that this Decision shall become effective immediately.

BY ORDER OF THE ARIZONA CORPORATION COMMISSION.


COMMISSIONER-CHAIRMAN


COMMISSIONER


COMMISSIONER

IN WITNESS WHEREOF, I, STUART R. BRACKNEY, Acting Executive Secretary of the Arizona Corporation Commission, have hereunto set my hand and caused the official seal of the Commission to be affixed at the Capitol, in the City of Phoenix, this 1 day of April 1999.


STUART R. BRACKNEY
ACTING EXECUTIVE SECRETARY

DISSENT _____
BMB:bbs

1 SERVICE LIST FOR: MOMENTUN TELECOM, INC.

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